IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 15682 of 2007(P)

OS.194/2002 of MUNSIFF COURT, PUNALUR

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PETITIONER:

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1. SUHARA BEEVI, KUNNUMMEL VEEDU,
   KARIYARA, VILAKKUDY VILLAGE, PATHANAPURAM.

2. NAZARUDHEEN, S/O.SUHARA BEEVI,
   KUNNEMEL VEEDU, KARIYARA, VILAKKUDY VILLAGE,
   PATHANAPURAM.

BY ADV. SRI.R.ARUN RAJ

RESPONDENTS:

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1. SARA UMMAL, KUNNEMEL VEEDU,
   KARIYARA, VILAKKUDY VILLAGE, PATHANAPURAM.

2. SHAMESE, S/O.SARA UMMAL,
   KUNNUMEL VEEDU, KARIYARA, VILAKKUDY VILLAGE,
   PATHANAPURAM.

3. HANEEFA, KUNNEMEL VEEDU,
   KARIYARA, VILAKKUDY VILLAGE, PATHANAPURAM.

4. HABILATH BEEVI, KUNNEMEL VEEDU,
   KARIYARA, VILAKKUDY VILLAGE, PATHANAPURAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN,J

W.P.(C) NO. 15682 of 2007

Dated this the 27th day of June, 2007

JUDGMENT

This writ petition is filed seeking to quash Ext.P6 order. The writ petitioner moved an application I.A.661/2006 to set aside the Commissioner's plan and report. There were two schedules of property. The Commissioner demarcated both schedules. The first scheduled property shown as items 6 to 9 and 10 and 11 and the second schedule is shown as items 1 to 5, in between there is a pathway leading to the south. In support of the petition, PWs.1 and 2 were examined. The court was satisfied that the evidence of PWs.1 and 2 does not suffer from any serious infirmity and as all the particulars necessary are reported and as there is nothing to show prima facie that the plan and report are wrong, the court refused to set aside the Commissioner's report. If the petitioner, at the stage of trial, is able to establish that how the Commissioner's plan and report cannot be accepted to decide the case is at liberty to do so and the observation of the court that the mahazar and plan are accepted cannot be done in a petition to set aside the Commissioner's plan and

report. The court is only expected to conduct an enquiry as to whether the plan and report are liable to be set aside on the grounds mentioned in the petition. So I make it clear that the present petitioner will be at liberty to challenge the plan and report of the Commissioner at the stage of evidence of the suit to convince the court regarding the acceptability of the same.

With that observation, the writ petition is dismissed.

M.N.KRISHNAN, JUDGE

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